IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6466 of 2007

(CRIME NO. 111/2007 OF PATHANAPURAM POLICE STATION)

PETITIONER/1ST ACCUSED

SHAJU SHERIF, AGED 28, S/O. MOHAMMED SHERIF, SHAJU MANZIL, KALAVOOR P.O., EDATHARA, PATHANAPURAM.

BY ADV. SMT.VIVEEJA RAVEENDRAN

RESPONDENTS: COMPLAINANTS

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE, PATHANAPURAM POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI. S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 6466 of 2007

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Dated this the 24th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered for offences punishable under section 498A. The marriage took place on 12.7.04. The petitioner is employed abroad. There is strain in the matrimony. According to the learned counsel for the petitioner, exaggerated and fanciful allegations are being raised solely because of the said strain in the matrimonial tie. There is no allegation of any physical cruelty resulting in injuries. The petitioner has returned from his place of employment only on 5.10.07. The petitioner now apprehends imminent arrest.

2. The learned Public Prosecutor submits that the investigation is already complete. The FIR was registered on 13.3.07. The petitioner was not available in the course of investigation. Investigation is complete. Final report has already been filed. The petitioner can appear before the learned Magistrate and seek regular bail in the ordinary course.

3. The learned counsel for the petitioner submits that the petitioner apprehends that he may be remanded to custody if he surrenders. The learned counsel for the petitioner submits that there

is no worthwhile allegations, whatsoever, raised against him to justify indictment under Section 498A IPC.

4. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that the State has no objection in granting anticipatory bail to the petitioner.

5. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked even in a case where a person apprehends arrest in execution of processes issued by a Criminal court after cognizance has been taken. Anticipatory bail can also be granted to such an inductee. I am satisfied that this is a fit case where the petitioner can be granted anticipatory bail.

6. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 31.10.2007.

ii) He shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 30.10.2007, he shall be released on bail on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 30.10.2007.

(R.BASANT, JUDGE)

sj